



# DG LEGAL

## LAW FIRM



P. O box 37925 - 00100  
Nairobi



legal@dickson-gitongaadv.com  
+254 (0)743927053 | +254 (0)701999892



Fortis Tower, Woodvale Grove, 6th Floor  
Westlands Road Nairobi, Kenya

## WHAT HAPPENS WHEN AN ADMINISTRATOR(s) OR BENEFICIARY OF AN ESTATE DIES?

In this article, we explore key succession challenges by answering three important questions:

- A. What Happens When the Sole Administrator of an Estate Dies?
- B. What Happens When One of Several Administrators Dies?
- C. What Happens When a Beneficiary of an Estate Dies?

Each of these scenarios presents unique legal and procedural considerations that can impact the distribution of an estate. Understanding these processes is essential for beneficiaries, administrators, and legal representatives navigating estate succession.

### 1. WHAT HAPPENS WHEN THE SOLE ADMINISTRATOR OF AN ESTATE DIES?

This issue was addressed in the case of *In re Estate of Thomas Masheti Amwoga (Deceased) (Succession Cause 98 of 2003) [2023] KEHC 17878 (KLR)*, where the court ruled that the death of an administrator renders a grant of letters of administration useless or inoperative. This ruling aligns with Section 76(e) of the Law of Succession Act, which allows for the revocation or annulment of a grant if it becomes useless or inoperative due to subsequent circumstances.

Section 76(e) of the Law of Succession Act provides that a grant of letters of administration can be revoked or annulled if it becomes "useless and inoperative through subsequent circumstances."



# DG LEGAL

## LAW FIRM



P. O box 37925 - 00100  
Nairobi



legal@dickson-gitongaadv.com  
+254 (0)743927053 | +254 (0)701999892



Fortis Tower, Woodvale Grove, 6th Floor  
Westlands Road Nairobi, Kenya

The death of a sole administrator is one such circumstance. When the sole administrator dies, the grant loses its effectiveness because there is no longer a person legally authorized to administer the estate. Consequently, the proper legal procedure is to apply for the revocation of the grant and seek a new grant to appoint a new administrator.

### **Why Substitution Is Not Allowed**

A common question is why the deceased administrator cannot simply be substituted with a new one. The court in *Succession Cause No. 66 of 1985* clarified that a grant of letters of administration is issued *in personam* (to a specific individual) and is not transferable. This principle is outlined in Sections 56 and 57 of the Law of Succession Act. The court further emphasized that the Law of Succession Act does not provide for the substitution of administrators. Instead, it requires the revocation of the existing grant and the issuance of a new one to another person or persons.

Section 81 of the Law of Succession Act provides guidance on situations involving continuing trusts. It states that where there is a continuing trust, a further grant must be made to one or more persons by the court. This provision underscores the fact that there is no room for substitution of a deceased administrator under the law. The proper procedure is always to revoke the existing grant and issue a new one.

## **2. WHAT HAPPENS WHEN ONE OF SEVERAL ADMINISTRATORS DIES?**



# DG LEGAL

## LAW FIRM



P. O box 37925 - 00100  
Nairobi



legal@dickson-gitongaadv.com  
+254 (0)743927053 | +254 (0)701999892



Fortis Tower, Woodvale Grove, 6th Floor  
Westlands Road Nairobi, Kenya

When one or more of several administrators die, Section 81 of the Law of Succession Act applies.

This section states that the powers and duties of the deceased administrators vest in the surviving administrators. However, this principle is subject to certain conditions:

- If the grant involves a continuing trust, a sole surviving administrator who is not a trust corporation cannot act in respect of the trust until the court makes a further grant to one or more persons jointly with them.

However, *In The Matter of the Estate of Tuaruchiu Marete*, the court outlined situations where an additional administrator should be appointed:

- ✓ In a Continuing Trusts.
- ✓ In cases where the deceased was polygamous, the death of one administrator may necessitate a replacement to represent the house they belonged to.
- ✓ The court may appoint an additional administrator for good cause and in the best interests of all concerned parties, as provided under Section 66 of the Law of Succession Act.

### 3. WHAT HAPPENS WHEN A BENEFICIARY OF AN ESTATE DIES?

If a beneficiary dies before the administration of the estate is complete, their share does not automatically pass to their heirs. Instead, it becomes part of their own estate, which must go through a separate succession process. For example, if Father John, a beneficiary of his father



# DG LEGAL

## LAW FIRM



P. O box 37925 - 00100  
Nairobi



legal@dickson-gitongaadv.com  
+254 (0)743927053 | +254 (0)701999892



Fortis Tower, Woodvale Grove, 6th Floor  
Westlands Road Nairobi, Kenya

Martin's estate, dies before the estate is fully administered, his share belongs to his estate and must be distributed to his own beneficiaries.

### Risks of Direct Distribution

Directly distributing the deceased beneficiary's share to one of their children can lead to several legal and practical issues:

- ✓ Disinheritance of Other Dependants.
- ✓ The court may struggle to identify the rightful beneficiaries of the deceased beneficiary's estate.
- ✓ The original succession cause does not relate to the deceased beneficiary, so legal safeguards such as gazettelement (public notice) may not apply.
- ✓ Disputes among the beneficiaries of the deceased beneficiary cannot be resolved within the original cause.

### Proper Legal Procedure

The correct procedure is to treat the deceased beneficiary's share as part of their estate. The administrators of the original estate must hold the share in trust until a grant of representation is obtained for the deceased beneficiary's estate. The family or interested parties of the deceased beneficiary must file a separate petition for letters of administration or probate in the deceased



# DG LEGAL

## LAW FIRM



P. O box 37925 - 00100  
Nairobi



legal@dickson-gitongaadv.com  
+254 (0)743927053 | +254 (0)701999892



Fortis Tower, Woodvale Grove, 6th Floor  
Westlands Road Nairobi, Kenya

beneficiary's estate. Once the grant is confirmed, the administrator can approach the original estate's administrators to rectify the grant and transfer the share to the rightful heirs.

In *Kambora Mamau v Esther Nyambura Kirima [2002] eKLR*, the court emphasized that a certificate of confirmation of grant confers a beneficial interest in the estate. If a beneficiary dies before receiving their share, it is not lawful to rectify the certificate to replace them with another person unless the new person is a confirmed executor or administrator of the deceased beneficiary's estate. This ensures that inheritance follows due process and prevents unauthorized redistribution.

Similarly, in *In the Matter of the Estate of Kisigwa Asuga Asuga (Deceased)*, the court ruled that the share of a deceased beneficiary remains in their name until a grant of representation is obtained for their estate. The family of the deceased beneficiary must take the necessary legal steps to claim the share.

### CONCLUSION

Please feel free to reach out to us at ([legal@dglegal.co.ke](mailto:legal@dglegal.co.ke) or call us on 0743927053) if you have any questions or require further clarification. We are here to guide you through this process and ensure that your family's interests are protected.